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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 JENNIE QUAN, individually and as  
11 successor in interest to BENJAMIN  
CHIN, deceased,

12  
13 Plaintiffs,

14 vs.

15 COUNTY OF LOS ANGELES;  
16 MARISOL BARAJAS; HECTOR  
VAZQUEZ; and DOES 3-10, inclusive,

17  
18 Defendants.

Case No. 2:24-cv-04805-MCS-KS

*Assigned to:*

Hon Mark C. Scarsi

Hon. Mag. Judge Karen L. Stevenson

**[PROPOSED] FINAL PRE-TRIAL  
CONFERENCE ORDER**

Trial Date: February 10, 2026

Final Pre-Trial Conference:  
January 26, 2026

Judge: Hon. Mark C. Sarsi

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Following pretrial proceedings, pursuant to Federal Rule of Civil Procedure, Rule 16 and Local Rule 16, IT IS HEREBY ORDERED:

**1. THE PARTIES AND PLEADINGS**

Plaintiff: Jennie Quan, individually and as successor in interest to Benjamin Chin, deceased.

Defendants: County of Los Angeles, Marisol Barajas, and Hector Vazquez.

All of the defendants have been served. All other parties named in the pleadings and not identified in the preceding paragraph are now dismissed.

The pleadings that raise the issues are:

A. Plaintiffs' First Amended Complaint. (Doc. No. 31).

B. Defendants' Answer. (Doc. No. 36.)

Plaintiff's second cause of action for Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983), third cause of action for Municipal Liability—Ratification (42 U.S.C. § 19830, fourth cause of action for Municipal Liability—Inadequate Training (42 U.S.C. § 1983), and fifth cause of action for Municipal Liability—Unconstitutional Custom or Policy (42 U.S.C. § 1983) have been dismissed.

**2. JURISDICTION**

It is stipulated that subject matter jurisdiction over this action exists under 28 U.S.C. § 1367 and § 1391, and venue is proper in this District and this Division pursuant to 28 U.S.C. § 1391(b).

**3. TRIAL DURATION**

Trial is estimated to take 5-7 court days.

**4. JURY TRIAL**

The trial is to be a jury trial.

Plaintiff and Defendants shall serve and file "Agreed Upon Set of Jury Instructions and Verdict Forms" as well as the "Joint Statement re Disputed Instructions, Verdicts, etc." by no later than January 12, 2026.

1 **5. ADMITTED FACTS**

2 The following facts are admitted and require no proof:

3 1. At all relevant times, Defendant Marisol Barajas was employed as a  
4 sheriff's deputy for the Los Angeles Sheriff's Department and by the County of Los  
5 Angeles. (Defs.' Answer to FAC, Doc. No. 36 ¶ 7).

6 2. At all relevant times, Defendant Hector Vazquez was employed as a  
7 sheriff's deputy for the Los Angeles Sheriff's Department and by the County of Los  
8 Angeles. (Defs.' Answer to FAC, Doc. No. 36 ¶ 8).

9 **6. STIPULATED FACTS**

10 The following facts, though stipulated, shall be without prejudice to any  
11 evidentiary objections:

12 (1) The incident occurred on June 19, 2022.

13 (2) At all relevant times, Defendants Marisol Barajas and Hector Vazquez  
14 were acting within the course and scope of their employment as police  
15 officers for Los Angeles County Sheriff's Department.

16 (3) At all relevant times, Defendants Marisol Barajas and Hector Vazquez  
17 were acting under color of law.

18 **7. PARTIES' CLAIMS AND DEFENSES**

19 **Plaintiff's Claims:**

20 (a) Plaintiff plans to pursue the following claims against Defendants:

21 **Claim 1:** Fourth Amendment—Excessive Force

22 **Claim 2:** Battery (Survival and Wrongful Death)

23 **Claim 3:** Negligence (Survival and Wrongful Death)

24 **Claim 4:** Violation of Cal. Civ. Code § 52.1 ("Bane Act")

25 (b) The elements required to establish Plaintiff's claims are:

26 **Claim 1:**

27 1. Marisol Barajas and Hector Vazquez Vaccari acted under color of law;

28 2. Whether Marisol Barajas and Hector Vazquez used excessive force

1 against Benjamin Chin;

- 2 3. Whether The excessive force caused injury, damage, loss, or harm to  
3 Benjamin Chin.

4 **Claim 2:**

- 5 1. Marisol Barajas and Hector Vazquez Vaccari used unreasonable force  
6 against Mr. Chin;  
7 2. Marisol Barajas and/or Hector Vazquez's use of unreaosnable force was  
8 a cause of injury or death to Mr. Chin.

9 **Claim 3:**

- 10 1. Marisol Barajas and/or Hector Vazquez Vaccari was negligent;  
11 2. The negligence of Marisol Barajas and/or Hector Vazquez was a cause of  
12 injury or death to Mr. Chin.

13 **Claim 4:**

- 14 1. Marisol Barajas and Hector Vazquez Vaccari used excessive force  
15 against Benjamin Chin;  
16 2. Marisol Barajas and/or Hector Vazquez intended to violate Mr. Chin's  
17 rights, demonstrated by these Defendants acting with reckless disregard  
18 for Mr. Chin's right to be free from excessive force;  
19 3. The use of excessive force was a cause of injury, damage, harm, or death  
20 to Mr. Chin.

21 (c) The Key Evidence Plaintiff Relies on for Each Claim

22 **Claim 1:**

23 (1) testimonies of defendants; (2) testimonies of deputies at the scene; (3)  
24 testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident;  
25 (5) still shots from videos capturing the incident; (6) forensic evidence,  
26 including autopsy report; (7) testimonies of plaintiff and damages witnesses;  
27 and (8) photographs of plaintiff and the decedent.

28 **Claim 2:**

1 (1) testimonies of defendants; (2) testimonies of deputies at the scene; (3)  
2 testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident;  
3 (5) still shots from videos capturing the incident; (6) forensic evidence,  
4 including autopsy report; (7) testimonies of plaintiff and damages witnesses;  
5 and (8) photographs of plaintiff and the decedent.

6 **Claim 3:**

7 (1) testimonies of defendants; (2) testimonies of deputies at the scene; (3)  
8 testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident;  
9 (5) still shots from videos capturing the incident; (6) forensic evidence,  
10 including autopsy report; (7) testimonies of plaintiff and damages witnesses;  
11 and (8) photographs of plaintiff and the decedent.

12 **Claim 4:**

13 (1) testimonies of defendants; (2) testimonies of deputies at the scene; (3)  
14 testimonies of plaintiffs' expert witnesses; (4) videos capturing the incident;  
15 (5) still shots from videos capturing the incident; (6) forensic evidence,  
16 including autopsy report; (7) testimonies of plaintiff and damages witnesses;  
17 and (8) photographs of plaintiff and the decedent.

18 **Defendants' Section**

19 Defendants contend that the following additional elements are required for  
20 Plaintiff's claims set forth in Plaintiff's section above:

21 **Claim 1 - Excessive Force under The Fourth Amendment to the U.S.**

22 **Constitution:**

23 In determining whether the officer used excessive force in this case, the jury  
24 should consider all of the circumstances known to the officer on the scene, including:

- 25 1. the nature of the crime or other circumstances known to the officer at the  
26 time force was applied;  
27 2. whether Plaintiff posed an immediate threat to the safety of the officer or  
28 to others;

- 1           3.     whether Plaintiff was actively resisting arrest or attempting to evade
- 2                 arrest by flight;
- 3           4.     the amount of time the officer had to determine the type and amount of
- 4                 force that reasonably appeared necessary, and any changing
- 5                 circumstances during that period;
- 6           5.     the type and amount of force used;
- 7           6.     the availability of alternative methods to subdue Plaintiff;
- 8           7.     the number of lives at risk (motorists, pedestrians, police officers) and
- 9                 the parties' relative culpability; i.e., which party created the dangerous
- 10                situation, and which party is more innocent;
- 11          8.     whether it was practical for the officer to give warning of the imminent
- 12                use of force, and whether such warning was given;
- 13          9.     whether a reasonable officer would have or should have accurately
- 14                perceived a mistaken fact; and
- 15          10.    whether there was probable cause for a reasonable officer to believe that
- 16                Plaintiff was committing a crime involving the infliction or threatened
- 17                infliction of serious physical harm.

18           “Probable cause” exists when, under all of the circumstances known to the  
19 officer at the time, an objectively reasonable police officer would conclude there is a  
20 fair probability that Plaintiff was committing a crime. (Ninth Circuit Manual of  
21 Model Civil Jury Instructions §§ 9.20 & 9.25); *Starr v. Baca*, 652 F.3d 1202, 1207  
22 (9th Cir. 2011); *Nelson v. City of Davis*, 571 F.3d 924, 929 (9th Cir. 2009);  
23 *Villanueva v. California*, 986 F.3d 1158, 1168 (9th Cir. 2021).

24           A. Key Evidence in Opposition to Claim 1:

25           (1)   Dispatch reported the following to the Defendant Deputies: the Decedent  
26 was wearing a bullet-proof vest while wielding an AR-15, he fired multiple rounds in  
27 the air, there was a stabbing victim in the area;

28           (2)   The Walnut Sheriff's Station received multiple 911 calls reporting the

1 facts and observations relayed to the Defendant Deputies described in section  
2 (1) above.

3 (3) Video evidence confirms that the Decedent wielded an AR-15, wore a  
4 bullet-proof vest, stabbed the Plaintiff (his mother), and fired multiple rounds  
5 in the air;

6 (4) When Barajas and Vazquez arrived to the scene, they observed the  
7 Decedent wearing a bullet-proof vest and wielding an AR-15;

8 (5) Barajas, while traveling southbound on Diamond Bar Boulevard, exited  
9 her patrol vehicle after observing the Decedent walking northbound on  
10 Diamond Bar Boulevard;

11 (6) Brandon Wiseman was inside his parked Tesla on Diamond Bar  
12 Boulevard next to Barajas while the Decedent walked northbound on the same  
13 street;

14 (7) Vazquez equipped a shotgun loaded with slug ammunition and followed  
15 the Decedent on foot from Crooked Creek Drive to Diamond Bar Boulevard;

16 (8) Vazquez encountered the Plaintiff on Crooked Creek Drive with blood  
17 on her hands, having been stabbed by the Decedent;

18 (9) Vazquez and Detective Bronowicki issued several commands for the  
19 Decedent to drop his rifle prior to the Decedent arriving on Diamond Bar  
20 Boulevard, which were ignored;

21 (10) While the Decedent walked northbound on Diamond Bar Boulevard,  
22 Barajas pointed her service handgun at the Decedent and issued seven  
23 warnings for him to drop his weapon;

24 (11) Less-lethal ammunition was not an option because the Decedent posed a  
25 lethal imminent threat, and the Defendant Deputies believed less-lethal would  
26 be futile against the Decedent's bullet-proof vest.

27 (12) The Decedent approached to within 7-10 feet of Barajas' vehicle on  
28 Diamond Bar Boulevard with his AR-15 slung around his shoulder before



1 Barajas fired the first shot at the Decedent;

2 (13) It was unclear to Barajas whether the first shot struck and injured the  
3 Decedent because he continued walking northbound on Diamond Bar  
4 Boulevard after the first shot;

5 (14) At the time of Barajas' first shot, Vazquez was approximately 30-40 feet  
6 behind the Decedent's left-flank on Diamond Bar Boulevard;

7 (15) After determining that the Decedent still posed a lethal imminent threat,  
8 Vazquez and fired his first shot – the second shot in the sequence -  
9 approximately 5.649 seconds after Barajas' shot;

10 (16) It was unclear to Vazquez whether his first shot injured the Decedent  
11 because the Decedent continued walking northbound on Diamond Bar  
12 Boulevard after Vazquez's first shot;

13 (17) After determining that the Decedent still posed a lethal imminent threat,  
14 Barajas ordered the Decedent to drop his weapon an eighth and ninth time, and  
15 began ordering him a tenth time, before firing her second shot – the third shot  
16 in the sequence.

17 (18) Barajas' second shot occurred approximately .881 seconds after  
18 Vazquez's first shot;

19 (19) It was unclear to Barajas whether the first shot struck and injured the  
20 Decedent because the Decedent continued walking northbound on Diamond  
21 Bar Boulevard after Barajas' second shot;

22 (20) After determining that the Decedent still posed a lethal imminent threat,  
23 Barajas fired her third shot – the fourth shot in the sequence – approximately  
24 1.929 seconds after firing her second shot.

25 (21) Barajas' third shot struck the Decedent in the lower abdomen, after  
26 which he began leaning forward;

27 (22) After determining that the Decedent still posed a lethal imminent threat,  
28 Vazquez fired his second shot – the fifth and final shot in the sequence –

1 approximately 1.552 seconds after Barajas' third shot.

2 (23) Vazquez's second shot struck the Decedent in the lower back, after  
3 which the Decedent fell to the ground;

4 (24) No additional shots were fired after the Decedent fell to the ground;

5 (25) The responding deputies approached the Decedent and promptly began  
6 rendering medical care;

7 (26) The Decedent was transported to Pomona Valley Hospital Medical  
8 Center, where he was pronounced deceased later that day.

9 **Claim 2 - Battery by Peace Officer (Deadly Force) – Essential Factual**

10 **Elements:**

11 1. That Marisol Barajas and Hector Vazquez intentionally touched  
12 Benjamin Chin;

13 2. That Marisol Barajas and Hector Vazquez used deadly force on  
14 Benjamin Chin;

15 3. That Marisol Barajas' and Hector Vazquez' use of deadly force was not  
16 necessary to defend human life;

17 4. That Benjamin Chin was killed; and

18 5. That Marisol Barajas' and Hector Vazquez' use of deadly force was a  
19 substantial factor in causing Benjamin Chin's death.

20 Marisol Barajas and Hector Vazquez use of deadly force was necessary to  
21 defend human life only if a reasonable officer in the same situation would have  
22 believed, based on the totality of the circumstances known to or perceived by Marisol  
23 Barajas and Hector Vazquez at the time, that deadly force was necessary to defend  
24 against an imminent threat of death or serious bodily harm to Marisol Barajas and  
25 Hector Vazquez or to another person or to apprehend a fleeing person for a felony,  
26 when all of the following conditions are present:

27 i. The felony threatened or resulted in death or serious bodily injury to another;

28 ii. Marisol Barajas and Hector Vazquez reasonably believed that Benjamin

1 Chin would cause death or serious bodily injury to another unless immediately  
2 apprehended; and

3       iii. If practical under the circumstances, Marisol Barajas and Hector Vazquez  
4 made reasonable efforts to identify themselves as peace officers and to warn that  
5 deadly force would be used, unless the officers had objectively reasonable grounds to  
6 believe Benjamin Chin was aware of those facts.

7       A peace officer must not use deadly force against persons based only on the  
8 danger those persons pose to themselves, if an objectively reasonable officer would  
9 believe the person does not pose an imminent threat of death or serious bodily injury  
10 to the peace officers or to another person.

11       “Deadly force” means any use of force that creates a substantial risk of  
12 causing death or serious bodily injury, including, but not limited to, the discharge of a  
13 firearm.

14       A threat of death or serious bodily injury is “imminent” when, based on the  
15 totality of the circumstances, a reasonable officer in the same situation would believe  
16 that a person has the present ability, opportunity, and apparent intent to immediately  
17 cause death or serious bodily injury to the peace officer or another person. An  
18 imminent harm is not merely a fear of future harm, no matter how great the fear and  
19 no matter how great the likelihood of the harm, but is one that, from appearances,  
20 must be instantly confronted and addressed.

21       “Totality of the circumstances” means all facts known to the peace officer at  
22 the time, including the conduct of Marisol Barajas and Hector Vazquez and Benjamin  
23 Chin leading up to the use of deadly force. In determining Marisol Barajas and  
24 Hector Vazquez’ use of deadly force was necessary in defense of human life, you  
25 must consider the Marisol Barajas and Hector Vazquez tactical conduct and decisions  
26 before using deadly force on Benjamin Chin and whether Marisol Barajas and Hector  
27 Vazquez used other available resources and techniques as alternatives to deadly  
28 force, if it was reasonably safe and feasible to do so. You must also consider whether

1 Marisol Barajas and Hector Vazquez knew or had reason to know that Benjamin  
2 Chin was suffering from a physical, mental health, developmental, or intellectual  
3 disability that may have affected his ability to understand or comply with commands  
4 from the officers.

5 A. Key Evidence in Opposition to Claim 2:

6 (1) See evidence under Claim 1.

7 **Claim 3 - Negligent Use of Deadly Force by Peace Officer – Essential**

8 **Factual Elements (CACI 441):**

- 9 1. That the Marisol Barajas and Hector Vazquez were peace officers;  
10 2. That Marisol Barajas and Hector Vazquez used deadly force on  
11 Benjamin Chin;  
12 3. That Marisol Barajas' and Hector Vazquez's use of deadly force was not  
13 necessary to defend human life;  
14 4. That Benjamin Chin was killed; and  
15 5. That Marisol Barajas' and Hector Vazquez' use of deadly force was a  
16 substantial factor in causing Benjamin Chin's death.

17 The Defendants' use of deadly force was necessary to defend human life only  
18 if a reasonable officer in the same situation would have believed, based on the totality  
19 of the circumstances known to or perceived by the Defendants at the time, that deadly  
20 force was necessary [either]:

21 A. To defend against an imminent threat of death or serious bodily injury  
22 to Defendants and/or another person; or

23 B. To apprehend a fleeing person for a felony, when all of the conditions  
24 are present:

25 6. The felony threatened or resulted in death or serious bodily injury to  
26 another;

27 7. The officers reasonably believed that the person fleeing would cause  
28 death or serious bodily injury to another unless immediately apprehended; and

1           8.     The officers made reasonable efforts to identify themselves as peace  
2 officers and to warn that deadly force may be used, unless the officers had  
3 objectively reasonable grounds to believe the person was already aware of those  
4 facts.

5           A threat of death or serious bodily injury is “imminent” if, based on the totality  
6 of the circumstances, a reasonable officer in the same situation would believe that a  
7 person has the present ability, opportunity, and apparent intent to immediately cause  
8 death or serious bodily injury to the officer or to another person. An imminent harm  
9 is not merely a fear of future harm, no matter how great the fear or likelihood, but is  
10 one that, from appearances, must be confronted and addressed immediately.

11           “Totality of the circumstances” means all facts known to or perceived by the  
12 peace officers at the time, including the conduct of Marisol Barajas, Hector Vazquez  
13 and Benjamin Chin leading up to the use of deadly force. In determining whether the  
14 use of deadly force was necessary in defense of human life, you must also consider  
15 Marisol Barajas’ and Hector Vazquez’ tactical conduct and decisions before using  
16 deadly force on Benjamin Chin and whether Marisol Barajas and Hector Vazquez  
17 used other available resources and techniques as an alternative to deadly force, if it  
18 was reasonably safe and feasible to an objectively reasonable officer.

19           A peace officer who makes or attempts to make an arrest does not have to  
20 retreat or stop because the person being arrested is resisting or threatening to resist.  
21 Tactical repositioning or other deescalation tactics are not retreat. A peace officer  
22 does not lose the right to self-defense by using objectively reasonable force to arrest  
23 or prevent escape.

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1 A. Key Evidence in Opposition to Claim 2:

2 (1) See evidence under Claim 1.

3 **Claim 4 – Bane Act**

4 1. That Marisol Barajas and Hector Vazquez, acted violently against  
5 Benjamin Chin from exercising his right to be free from unreasonable seizure and  
6 unreasonable excessive force;

7 2. That Marisol Barajas and Hector Vazquez intended to deprive Benjamin  
8 Chin of his enjoyment of the interests protected by the right to be free from  
9 unreasonable searches and seizures and unreasonable excessive force;

10 3. That Benjamin Chin was harmed; and

11 4. That the Marisol Barajas' and Hector Vazquez' conduct was a  
12 substantial factor in causing Benjamin Chin's harm.

13 A. Key Evidence in Opposition to Claim 2:

14 (1) See evidence under Claim 1.

15 **Defendants' Affirmative Defenses:**

16 B. First Affirmative Defense: The Defendant Deputies Are Entitled to  
17 Qualified Immunity from the 42 U.S.C. § 1983 Claims

18 1. Elements Required to Establish Defendants' First Affirmative  
19 Defense:

20 (a) The Defendant Deputies' conduct did not deprive the  
21 Decedent of his constitutional rights;

22 (b) The officers did not violate a "clearly established"  
23 constitutional right of the Decedent; and

24 (c) A reasonable deputy faced with the circumstances facing the  
25 Defendant Deputies could have believed his or her conduct  
26 was lawful.

27 See *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Pearson v. Callahan*,  
28 129 S.Ct. 808, 818 (2009); *Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

2. Key Evidence in Support of Defendants' First Affirmative Defense:

- (1) An immediate threat existed because the Decedent was armed with an AR-15, bullet-proof vest, he fired multiple rounds in the air, and he stabbed the Plaintiff prior to the Defendant Deputies arriving on scene;
- (2) The Defendant Deputies were aware of the facts recited in (1) above prior to encountering the Decedent on Diamond Bar Boulevard;
- (3) Barajas saw the Decedent walking northbound on Diamond Bar Boulevard and parked her vehicle on Diamond Bar Boulevard next to Mr. Wiseman, who was inside his Tesla;
- (4) The Decedent was walking towards Barajas and Mr. Wiseman with his AR-15 slung around his shoulder and wearing his bullet-proof vest;
- (5) The angle of the Decedent's right arm indicates he was holding the pistol grip of the AR-15 with his right hand;
- (6) The Decedent came within 7-10 feet of Mr. Wiseman, at which point Barajas fired her handgun at the Decedent
- (7) Prior to firing her first shot, Barajas pointed her handgun at the Decedent and issued seven commands for the Decedent to drop his weapon, all of which were ignored by the Decedent;
- (8) After Barajas fired her first shot, the Decedent remained standing and continued walking in the direction of Mr. Wiseman and Barajas;
- (9) Vazquez and Detective Bronowicki issued several commands to the Decedent to drop his weapon while the Decedent was walking from Crooked Creek Drive to Diamond Bar Boulevard, which the Decedent ignored;

- 1 (10) Vazquez witnessed the Plaintiff with her hands covered in  
2 blood on Crooked Creek Drive prior to the shooting;
- 3 (11) After Barajas' first shot, Vazquez fired the second shot from  
4 behind the Decedent while the Decedent was progressing  
5 northbound on Diamond Bar Boulevard;
- 6 (12) The Decedent continued walking northbound on Diamond Bar  
7 Boulevard after the second shot;
- 8 (13) Barajas issued two more commands for the Decedent to drop  
9 his weapon, and began issuing a third warning, before firing  
10 a third shot overall at the Decedent;
- 11 (14) The Decedent continued standing and advancing towards Mr.  
12 Wiseman and Barajas, and Barajas fired a fourth overall shot;
- 13 (15) While the Decedent was still standing, Vazquez fired a fifth  
14 overall shot at the Decedent;
- 15 (16) The Decedent fell to the ground after the fifth shot, and no  
16 more shots were fired by either deputy.

17 C. Second Affirmative Defense: The Officers Are Immune Under California  
18 Penal Code § 196—Justifiable Homicide

19 1. Elements Required to Establish Defendants' Second Affirmative  
20 Defense:

- 21 (a) The circumstances reasonably created a fear of death or  
22 serious bodily harm to the officers or others; and
- 23 (b) The officers necessarily committed the homicide against the  
24 Decedent in the discharge of their legal duties.

25 *See* Cal. Pen. Code § 196; *Brown v. Ransweiler*, 171 Cal.App.4th 516,  
26 533 (2009); *Gilmore v. Superior Court*, 230 Cal.App.3d 416, 421 (1991)  
27 (justifiable homicide is privileged act that precludes all tort liability  
28 arising therefrom).



2. Key Evidence in Support of Defendants' Second Affirmative Defense:

- (a) See key evidence under first affirmative defense.

D. Third Affirmative Defense: Qualified Immunities (state)

1. Elements Required to Establish Defendants' Third Affirmative Defense:

- (a) If the employee is immune from liability, Defendant County of Los Angeles also is immune from liability;
- (b) An employee of Defendant County of Los Angeles was exercising the discretion vested in him;
- (c) An employee of Defendant County of Los Angeles cannot be held liable for an injury caused by the act or omission of another person;
- (d) A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

*See* Cal. Gov. Code, § 815.2(b): Injuries by Employee within Scope of Employment; Immunity of Employee; Cal. Gov. Code, § 820.2: Discretionary Acts; Cal. Gov. Code, § 820.8: Acts or Omissions of Others; Cal. Gov. Code § 821.6: Immunity.

2. Key Evidence in Support of Defendants' Third Affirmative Defense:

- (a) See key evidence under first affirmative defense.

E. Fourth Affirmative Defense: Self-Defense/Defense of Others

1. Elements Required to Establish Defendants' Fourth Affirmative Defense:

- (a) That the Defendant Deputies reasonably believed that the

Decedent was going to harm each of them or others;

- (b) That the Defendant Deputies used only the amount of force that was reasonably necessary to protect themselves or others.

*See CACI 1304.*

2. Key Evidence in Support of Defendants' Fourth Affirmative Defense:

- (a) See key evidence under first affirmative defense.

F. Fifth Affirmative Defense: Contributory Negligence

1. Elements Required to Establish Defendants' Fifth Affirmative Defense:

- (a) That the Decedent was negligent;  
(b) That the Decedent and/or others' negligence was a substantial factor in causing his harm.

*See CACI 405 (2009).*

2. Key Evidence in Support of Defendants' Fifth Affirmative Defense:

- (a) See key evidence under first affirmative defense.

**8. REMAINING TRIABLE ISSUES**

In view of the admitted facts and the elements required to establish the claims and affirmative defenses, the following issues remain to be tried:

1. Whether Defendants Marisol Barajas and/or Hector Vazquez used excessive and/or unreasonable force against Decedent Benjamin Chin;
2. Whether Defendants Marisol Barajas and/or Hector Vazquez's use of excessive and/or unreasonable force was a cause of Decedent Benjamin Chin's injury and/or death;
3. Whether Defendants Marisol Barajas and/or Hector Vazquez were negligent in their conduct towards Decedent Benjamin Chin;

- 1 4. Whether Defendants Marisol Barajas and/or Hector Vazquez's negligence
- 2 was a cause of Decedent's injury and/or death Benjamin Chin;
- 3 5. Whether Defendants Marisol Barajas and/or Hector Vazquez acted with
- 4 reckless disregard of Decedent Benjamin Chin's constitutional rights;
- 5 6. The nature and extent of Decedent Benjamin Chin's damages, including the
- 6 nature and extent of Decedent's injuries, the loss of enjoyment of life, the
- 7 mental, physical and emotional pain and suffering experienced prior to
- 8 death;
- 9 7. The nature and extent of Plaintiff Jennie Quan's economic and non-
- 10 economic damages, including Plaintiff's loss of Decedent Benjamin Chin's
- 11 love, companionship, comfort, care, assistance, protection, affection,
- 12 society, and moral support; and
- 13 8. Whether Defendants Marisol Barajas and/or Hector Vazquez acted with
- 14 malice, oppression, or in reckless disregard of Decedent Benjamin Chin's
- 15 rights so as to warrant an award of punitive damages.

16 **9. DISCOVERY**

17 All discovery is complete.

18 **10. DISCLOSURES AND EXHIBIT LIST**

19 All disclosures under Fed. R. Civ. P. 26(a)(3) have been made.

20 The joint exhibit list of the parties has been filed under separate cover as  
21 required by L.R. 16-6.1 ("Joint Exhibit List"). In view of the volume of exhibits  
22 marked by each party, the parties have incorporated in the attached "Joint Exhibit  
23 List" all agreements regarding admitted exhibits, and all objections, including  
24 grounds therefor.

25 **11. WITNESS LIST**

26 Witness lists of the parties have been filed under separate cover.

27 Only the witnesses identified on the lists will be permitted to testify (other than  
28 solely for impeachment).

1 **12. MOTIONS IN LIMINE**

2 Motions *in Limine* and or law and motion matters have been filed with the  
3 Court. The parties have met and conferred on the motions *in limine*. The following  
4 motions *in limine*, and no others, are pending or contemplated:

5 **Plaintiff:**

6 1. Plaintiff's Motion *in Limine* No. 1 to Exclude Testimony of Defense  
7 Expert Joel Suss, PhD From Trial;

8 2. Plaintiff's Motion *in Limine* No. 2 to Exclude Testimony of Defense  
9 Expert Edward T. Flosi From Trial;

10 3. Plaintiff's Motion *in Limine* No. 3 to Exclude Opinions of Defense  
11 Expert John Marehbian, MD Not Disclosed in Rebuttal Report;

12 4. Plaintiff's Motion *in Limine* No. 4 to Exclude Evidence or References to  
13 Information Not Known to Defendant Deputies at the Time of the Incident;

14 **Defendants:**

15 1. Defendants' Motion in Limine No. 1 to Exclude, or Limit, the Opinions  
16 of Bennet Omalu, M.D.;

17 2. Defendants' Motion in Limine No. 2 to Preclude Plaintiff From  
18 Displaying Autopsy and Postshooting Photographs of Decedent;

19 3. Defendants' Motion in Limine No. 3 to Preclude Evidence of Other  
20 Claims, Lawsuits, Settlements, Verdicts, Judgments, Complaints, Administrative  
21 Investigations or Proceedings and/or Other Alleged Incidents Concerning Defendants  
22 or Other Members of Law Enforcement and the Los Angeles County Sheriff's  
23 Department.

24 **13. BIFURCATION**

25 Bifurcation of the following issues for trial is ordered: entitlement to punitive  
26 damages and amount of punitive damages.

27 **14. ADMISSIONS**

28 The foregoing admissions having been made by the parties, and the parties

1 having specified the foregoing issues remaining to be litigated, this Final Pre-Trial  
2 Conference Order shall supersede the pleadings, and govern the course of the trial of  
3 this case, unless modified to prevent manifest justice.

4  
5 DATED: UNITED STATES DISTRICT COURT

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7  
8 HON. MARK C. SCARSI  
9 UNITED STATES DISTRICT JUDGE

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12  
13 Approved as to form and content:

14  
15 /s/ Hang D. Le

16 Attorney for Plaintiff

17  
18 /s/ Jerad J. Miller

19 Attorney for Defendants  
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